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# IN THE COURT OF APPEALS OF INDIANA

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| IN RE THE MATTER OF THE TERMINATION OF THE PARENT/CHILD RELATIONSHIP OF S.C.H.B., a child, and SHARLENE HAVEN, Natural Mother, | ) | |
| SHARLENE HAVEN, | ) | |
| Appellant-Defendant, | ) | |
| vs. | ) | No. 37A05-0606-JV-334 |
| JASPER COUNTY DEPARTMENT OF CHILD SERVICES, | ) | |
| Appellee-Plaintiff. | ) | |

APPEAL FROM THE JASPER CIRCUIT COURT
The Honorable John D. Potter, Judge
Cause No. 37C01-0602-JT-036

**March 21, 2007**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**VAIDIK, Judge**

## Case Summary

Sharlene Haven ("Mother") appeals the involuntary termination of her parental rights to her son, S.C.H.B. Concluding that the Jasper County Department of Child Services ("JCDCS") proved by clear and convincing evidence that there is a reasonable probability that the continuation of the parent-child relationship poses a threat to the well-being of S.C.H.B. and that termination is in the best interests of S.C.H.B., we affirm the termination of Mother's parental rights to S.C.H.B.

## Facts and Procedural History

Mother and Sean Blankenship ("Father") had two children together, S.G.B., born January 14, 1997, and S.C.H.B., born December 7, 1997. Father voluntarily terminated his parental rights to the children on March 13, 2006, and therefore, he is not a party to this appeal. In addition, this Court issued an opinion on January 17, 2007, affirming the involuntary termination of Mother's parental rights to S.G.B.; therefore, this appeal only involves S.C.H.B. *See In re S.G.B.*, No. 37A04-0606-JV-323 (Ind. Ct. App. Jan. 17, 2007).

In December 2004, Mother was living with S.G.B., S.C.H.B., and her then-boyfriend, Wayne Haven, in Rensselaer. That month, the JCDCS removed S.G.B. and S.C.H.B. from Mother and Haven's home because Haven was physically abusing the children. Nevertheless, Mother and Haven married in June 2005.

On February 15, 2006, the JCDCS filed a petition to terminate Mother's parental rights. The trial court held a final hearing on May 15, 2006. At this hearing, Jamie Fleming, the family case manager assigned to the case, testified that the JCDCS

developed a case plan for Mother "within 45 days after the removal [of S.C.H.B.] from the home, and then approximately six months thereafter." Tr. p. 7. Fleming testified that according to the case plan, Mother "was entitled to one visit per week" with S.C.H.B. for approximately one hour and was required to complete parenting classes, obtain a driver's license, secure employment and permanent housing, and keep in contact with the family case manager. *Id.* According to Fleming, Mother did not follow the case plan other than "maintain[ing] somewhat of a visitation schedule." *Id.* Fleming also testified that Mother had been "living out of the semi truck that her husband drove as part of his job" and that she did not have any documentation to support that Mother lived elsewhere. *Id.* at 8. Finally, Fleming testified that as of the date of the final hearing, charges against Haven for the alleged abuse against the children were pending.

Nancy Koedyker, a therapist who supervised Mother's visits with S.C.H.B., testified that Mother had missed eight visits over the course of approximately the previous four months because she was traveling with Haven. Koedyker also testified that when Mother did visit S.C.H.B., he was "very happy to see her; she was very happy to see [him]." *Id.* at 25. Koedyker, however, expressed concern about Mother raising S.C.H.B. "with [Haven] around[.]" *Id.*

Mother testified that she attended three or four parenting classes but had not completed the classes. According to Mother, she could not fully comply with the case plan because she "didn't have any transportation" due to the suspension of her driver's license in 1997. *Id.* at 45. Mother testified that she did not have her driver's license reinstated because it cost "$975" and she "wanted to save up money so [they] could buy a

home." *Id.* at 42. Mother further testified that she and Haven lived in Haven's semi-truck for approximately three months, until they moved to Valparaiso in May 2006, and that she had not yet secured employment.

In response to the question of whether she would cease living with Haven if her parental rights were not terminated, Mother said: "I don't understand how I could do that, when I do not have a license." *Id.* at 36. Mother testified that "if [she] thought for one second that [Haven] would do anything to [S.C.H.B.], [she] would not be with [Haven] at this time. [She] would never have married him to begin with." *Id.* at 40.

Finally, Emily Waddle, guardian ad litem for S.C.H.B., testified that Mother "simply has not done what she's been asked to do" and that "[c]learly this woman continually chooses her husband over her children." *Id.* at 56, 57. According to Waddle, "[S.G.B. and S.C.H.B.] are thriving in their current foster home." *Id.* at 57.

On May 15, 2006, the trial court issued an order terminating Mother's parental rights to S.C.H.B. The trial court found, among other things, as follows:

> [T]he services provided to assist the natural mother in fulfilling her parental obligations have either not been accepted or have failed.
>
> The Court further finds that the conditions which caused the removal of the child have not been remedied, in that the mother . . . has now married and continues to live with the boyfriend who battered the child twice, causing the initial removal.
>
> The Court further finds that the continuation of the parent-child relationship would pose a threat to the wellbeing of the child because the mother . . . has now married and continues to live with the boyfriend that battered the child twice, causing the initial removal.
>
> The Court further finds that all other requirements of Ind. Code § 31-6-5 have been met, and that the termination of the parent-child relationship of the child and the natural mother would be in the best interest of the child.

Appellant's App. p. 4-5. Mother now appeals the involuntary termination of her parental rights to S.C.H.B.

**Discussion and Decision**

Mother argues that the trial court erred in terminating her parental rights to S.C.H.B. We will not set aside a trial court's judgment terminating a parent-child relationship unless we determine that it is clearly erroneous. *M.H.C. v. Hill*, 750 N.E.2d 872, 875 (Ind. Ct. App. 2001). Findings of fact are clearly erroneous when the record lacks any evidence or reasonable inferences to support them. *Id*. In determining whether the evidence is sufficient to support the judgment terminating parental rights, this Court neither reweighs the evidence nor judges the credibility of witnesses. *Id*.

We begin by emphasizing that a trial court need not wait until a child is irreversibly influenced by a deficient lifestyle such that his or her physical, mental, and social growth is permanently impaired before terminating the parent-child relationship. *In re E.S.*, 762 N.E.2d 1287, 1290 (Ind. Ct. App. 2002). Rather, when the evidence shows that the emotional and physical development of a child in need of services is threatened, termination of the parent-child relationship is appropriate. *Id.* This Court has stated:

> The involuntary termination of parental rights is an extreme measure that terminates all rights of the parent to his or her child and is designed to be used only as a last resort when all other reasonable efforts have failed. The Fourteenth Amendment to the United States Constitution provides parents with the rights to establish a home and raise their children. However, the law allows for termination of those rights when the parties are unable or unwilling to meet their responsibility as parents. This policy balances the constitutional rights of the parents to the care and custody of their children with the State's limited authority to interfere with these rights. Because the

> ultimate purpose of the law is to protect the child, the parent-child relationship must give way when it is no longer in the child's best interest to maintain the relationship.

*M.H.C.*, 750 N.E.2d at 875 (citations omitted). In sum, the purpose of terminating parental rights is not to punish parents but to protect children. *In re A.I.*, 825 N.E.2d 798, 805 (Ind. Ct. App. 2005), *trans. denied*.

Indiana Code § 31-35-2-4(b)(2) provides that a petition to terminate parental rights must allege, in pertinent part, that:

> (B) there is a reasonable probability that:
> > (i) the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied; or
> > (ii) the continuation of the parent-child relationship poses a threat to the well-being of the child;
> (C) termination is in the best interests of the child; and
> (D) there is a satisfactory plan for the care and treatment of the child.

The Department of Child Services must prove each of these elements by clear and convincing evidence. Ind. Code § 31-37-14-2; *In re D.L.*, 814 N.E.2d 1022, 1026 (Ind. Ct. App. 2004), *trans. denied*. Indiana Code § 31-35-2-4(b)(2)(B) is written in the disjunctive; therefore, the trial court need only find one of the two elements in (b)(2)(B) by clear and convincing evidence. *Bester v. Lake County Office of Family & Children*, 839 N.E.2d 143, 148 n.5 (Ind. 2005).

Mother first argues that the JCDCS failed to prove by clear and convincing evidence that there is a reasonable probability that the continuation of the parent-child relationship poses a threat to the well-being of S.C.H.B. We note that, in this case, the trial court also found that the conditions resulting in S.C.H.B.'s removal have not been remedied, and it is that finding we will address. *See* Ind. Code § 31-35-2-4(b)(2)(B).

To determine whether the conditions that resulted in S.C.H.B.'s removal will be remedied, the trial court must look to the parent's fitness at the time of the termination proceeding. *In re D.L.*, 814 N.E.2d at 1027-28. In addition, the court must look at the patterns of conduct in which the parent has engaged to determine if future changes are likely to occur. *Id*. at 1028. When making its determination, the trial court can reasonably consider the services offered to the parent and the parent's response to those services. *Id*.

Here, the JCDCS removed S.C.H.B. from Mother's home because Mother's then-boyfriend Haven physically abused S.C.H.B. The record shows that at the time of the final hearing, Mother had married and was living with Haven and she intended to continue living with him. Additionally, Mother missed several visits with S.C.H.B. because she was traveling with Haven, did not complete parenting classes, failed to obtain employment, and did not have her driver's license reinstated. There is ample evidence that the conditions resulting in S.C.H.B.'s removal will not be remedied. As such, the trial court's finding is not clearly erroneous.

Mother next argues that the JCDCS failed to prove by clear and convincing evidence that termination is in the best interests of S.C.H.B. In determining what is in the best interests of a child, the trial court is required to look beyond the factors identified by the Department of Child Services and to the totality of the evidence. *See In re D.L.*, 814 N.E.2d at 1030. In doing so, the trial court must subordinate the interests of the parent to those of the child involved. *Id.*

The totality of the evidence in this case demonstrates that it is in S.C.H.B.'s best interests to terminate the parent-child relationship. Mother failed to obtain employment, and although she testified that she had established housing just before the final hearing, she did so with Haven, who had abused S.C.H.B. Case Manager Fleming testified that she felt it would be in S.C.H.B.'s best interests to terminate Mother's parental rights, that S.C.H.B. and his brother S.G.B. were residing with a foster family, and that "[t]here is a great possibility that the foster home that they are currently residing at would want to adopt them." Tr. p. 12. There is ample evidence that termination of the parent-child relationship is in the best interests of S.C.H.B. Accordingly, the trial court's finding is not clearly erroneous.

Affirmed.

BAILEY, J., and BARNES, J., concur.